

Earth observation satellite data for commercial purposes

Supplementary briefing to the Initial Appraisal of the Commission's Impact Assessment based on the additional information contained in the Commission's non-paper

Background

During discussions in Council on the Commission Impact Assessment (IA) accompanying the above proposal, concerns were expressed on certain issues on which the Commission was invited to provide further information. Several of these concerns, as listed below, were amongst the points highlighted in our own initial appraisal of the IA. The purpose of this note is to analyse the subsequent non-paper submitted by the Commission and to establish the extent to which it responds to the various points raised.

Council's main concerns, as summarized at the Coreper meeting of 17 October 2014, are the following:

1. the lack of evidence that the functioning of the internal market is hindered;
2. the lack of evidence to justify the proposed solution;
3. the lack of a comparative analysis of options 2 (recommendation) and 3 (directive) of the IA;
4. the lack of quantification of costs and poor economic analysis, in particular concerning the administrative costs of the transposition of the Directive for MS without high resolution Earth Observation (EO) capabilities, as well as for those Member States having no legislation in place;
5. the lack of consideration of existing regulatory regimes (both within and outside of Europe), and how they have impacted upon growth.

The Commission indicates that its non-paper 'in no way constitute[s] an additional impact assessment, but rather intends to provide further relevant information to the co-legislators'. In the light of the above concerns, it explains that the intention is to bring more information on the international context, on administrative burdens and on the results of the additional stakeholder survey carried out by DG GROW in late November and early December. The following analysis is based on the structure of the non-paper.

Consideration of existing regulatory regimes

The chapter dedicated to the international context explains that countries choose different ways/ models to promote commercial use of High Resolution Satellite Data (HRSD) while protecting their national security. Four different groups of such models are identified with some countries given as example for each. The non-paper pays particular attention to the US regulatory framework, saying that it is the most elaborate and mature and has the most important commercial providers of HRSD worldwide. It is not clear why no analysis is made of the other groups mentioned. The non-paper argues that the regime proposed by the directive would be both more transparent (creating a more transparent environment for business) and more flexible than the US regime. Because the European regime would allow for better access conditions to HRSD, the non-paper concludes that the concern expressed by some stakeholders that value-added companies may

turn to US data providers under the proposed directive, seems unfounded. However, the non-paper does not address the question as to whether the proposal might put EU based companies at a competitive disadvantage on the global market.

The non-paper does not explain why no conclusions are drawn about the possible lessons, if any, that the EU could learn from the success of the US in this field. In addition, no information is given about how the different types of regulatory regimes have impacted upon growth. To sum up, a clear consideration of existing regulatory regimes (both within and outside Europe), as demanded by Coreper, is missing.

Evidence that the functioning of the internal market is hindered

In order to try to reply to Coreper's concerns regarding the lack of evidence that the internal market is hindered, lack of justification of the proposed solution, and the limited scope of the consultation carried out in 2013, the Commission organised an additional stakeholder survey between 25 November and 8 December 2014. While it would be unreasonable, in this case, to expect the Commission to have observed the usual 12 week minimum period for public consultation provided for in the IA Guidelines, a two week period might be considered insufficient for such an exercise. This second survey consisted of two separate online questionnaires: one for value adding service providers (VAS), and the other for data providers. To get a better understanding of the reasons behind the replies obtained, DG GROW conducted 19 bilateral telephone interviews with companies replying to the survey.

The non-paper acknowledges the existence of the view that 'high resolution satellite data that is potentially problematic [re]presents a very small fraction of data available, consultants report that only 1% of data actually bought/sold is subject to some sort of security-related restriction', therefore it would be 'normal' to conclude that 'security issues and issues related to control of high resolution satellite data have no impact on most companies and therefore internal market is not hindered by those issues'. However, the Commission challenges this view by claiming that the results of the survey indicate that companies do experience difficulties.

As far as the survey for VAS is concerned, the non-paper points out that 9 respondents out of a total of 41 indicated that security related difficulties affect, or could negatively affect, their capacity to respond to their customers' demand or potential for further business. It does not mention, however, that the survey results also show that security related difficulties have a significant impact for just 1 respondent out of these 9 (2%). In addition, the non-paper shows that 11 respondents (27%) consider that the lack of transparency and business predictability does, or could negatively, affect their business. On the other hand, it fails to point out that not knowing whether data is, or will be considered, security sensitive, has a significant impact for the business of only 1 respondent (2%). Moreover, the presentation of the free text comments provided to some of the survey questions show that most of them do not appear to be in favour of the proposal.

Concerning the survey for data providers, the Commission concludes that the responses indicate the existence of problems on the internal market. However, it could also be argued, on the contrary, that no new evidence is provided to prove uncontestedly that the functioning of the common market is hindered. In addition, some of the comments provided by the 4 replying companies would seem not to support the proposal, believing, for example, that it could jeopardize their business, leading to unfair competition from non-EU companies.

Comparative analysis of options 2 (recommendation) and 3 (directive)

The Commission claims that it presented a carefully considered choice between a legislative and a non-legislative option in both the IA and in a previous non-paper presented to the Council Space Working Party. Our initial appraisal of the Commission's IA points out that a deeper consideration of the feasibility of the non-legislative option and its comparison with the legislative ones would have strengthened the IA. The issue is still among Coreper's concerns, as mentioned earlier, suggesting the need for further attention.

Evidence to justify the proposed solution

The non-paper includes a section on the survey replies from companies concerning the solutions presented by the proposal. While the Commission seems to 'see the glass half full', interpreting the survey replies as indicating agreement with the measures proposed, as pointed out above, the contrary can also be argued. For example, 10 (24%) of the VAS considered that similar control procedures across the EU concerning data sensitivity would have a negative impact for their business. In addition, 50% of the data providers indicated that they expect a negative impact from free circulation provisions (although the Commission does point out that interviews revealed that in one case, 'free circulation' had been misunderstood). As the Commission's non-paper does not seem to bring new elements on this issue, the identified need for evidence to justify the proposed solution remains unaddressed.

Quantification of costs and economic analysis, in particular concerning the administrative costs of the transposition of the proposed Directive

The non-paper differentiates between costs linked to the process of transposition of the directive and the costs linked to the implementation of measures contained in the proposal. In addition, it makes a distinction between a) Member States that do not have, and most likely will not have, a data provider on their territory; b) Member States that already have a data provider on their territory, or are likely to have it in the near future and have not yet established a legal framework for security controls for the dissemination of high resolution satellite data; and c) Member States that already have a data provider on their territory and have established security controls for the dissemination of high resolution satellite data.

For the first category of Member States, the administrative costs would mainly concern the transposition of the directive, while implementation costs linked, for example, with screening or authorization procedure will be missing. However, these Member States 'would have to implement a very limited number of provisions: the appointment of the competent national authority (Art. 10) (which would have very limited or no operational tasks), and reporting (Art. 11) (limited to stating absence of activity for as long as no data provider is established in the Member State in question)'. No quantification of these transposition and implementation costs is provided.

For the second category of Member States, there would be (extra) costs with introducing security controls. The non-paper refers to the indication of such costs already provided by the IA and notes that, independently of this directive, 'these Member States will very likely implement some form of security controls'. Therefore, the Commission does not bring any new quantification of the administrative costs for this type of states either.

Concerning the third category of Member States, administrative costs would be linked with adapting their security control procedures to the requirements of the proposed directive. As in the IA, the non-paper mentions that 'Member States are free to choose the means to implement the obligations arising from the directive, such as the screening and authorisation procedure'. Again, therefore, the non-paper does not shed more light with regard to the costs for these countries.

Conclusions

Even if the results of the second stakeholder survey are referred to throughout the non-paper, the Commission's use of its findings is rather selective and open to interpretation. No incontestable evidence is brought to indicate that the functioning of the internal market is hindered or to justify the proposed solution.

With regard to the other concerns expressed, further comparative analysis between the non-legislative and legislative options would have been helpful. More quantification of the administrative costs for the Member States would also have made the assessment more persuasive and it is regrettable that this aspect was not included in the scope of the survey. The non-paper identifies the four main existing regulatory regimes. However, it concentrates its analysis purely on the US regulatory framework, without explaining why no examination is made of the other groups mentioned. In conclusion, most of the concerns of Coreper, and the corresponding shortcomings pointed out in our initial appraisal of the IA, do not seem to have been convincingly addressed.

This note, prepared by the Ex-Ante Impact Assessment Unit for the Committees on Industry, Research and Energy (ITRE) and Internal Market and Consumer Protection (IMCO) of the European Parliament, supplements the analysis provided in its initial appraisal of the Commission's impact assessment accompanying the proposal for a Directive of the European Parliament and of the Council on the dissemination of Earth observation satellite data for commercial purposes. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

This document is also available on the internet at: www.europarl.europa.eu/thinktank

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